IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 7718 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NAYANBHAI ARVINDBHAI GABHAWALA
Versus
THE STATE OF GUJARAT AND ANOTHER

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Appearance :
MR KB ANANDJIWALA for Applicant.
MS MANISHA SHAH, APP for Respondent No. 1.
MR MITESH R AMIN for Respondent No. 2.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 23/12/2005

ORAL JUDGMENT

By filing this application, the applicant has prayed that FIR filed by the complainant being Crime Register No.I-346/2004 before the Satellite Police Station may be quashed and set aside, as the original accused has

settled the dispute with respondent No.2 and the applicant has not played any role in the transaction in question. The aforesaid complaint is filed under Sections 420, 406, 120–B, 467, 468, 471, 379 and 397 of Indian Penal Code, on the ground that the complainant had booked a flat with the original accused – Sanjay R. Shah and he was required to be given Flat No.J/83 of Geratpur Bhagya Laxmi Cooperative Society, Part – 12. Subsequently, possession letter as well as allotment letter were given to the complainant and possession of the flat was also handed over to the complainant. Subsequently the complainant found that somebody has broken the lock and taken away the articles belonging to the complainant. On such allegations the aforesaid complaint has been filed. In the body of the complaint name of the applicant is also mentioned.

Mr.Anandjiwala, learned advocate for the applicant submitted that the applicant was not holding the post of Director at the relevant time. He further submitted that since the main accused Sanjay R. Shah has settled the dispute with the original complainant and since the amount in question is already paid to the complainant, complaint against the applicant is also required to be quashed.

Mr.Anandjiwala has relied upon the decision of the learned Single Judge of this Court delivered in Special Criminal Application No.341 of 2005 dated 25-10-2005, whereby the complaint being C.R.No. I – 346/2004 is quashed by the learned Single Judge of this Court in view of the settlement arrived at between the parties. Copy of the said order is kept on record at the instance of Mr.Anandjiwala. It is also submitted by Mr.Anandjiwala that the applicant has approached this Court prior to the passing of the aforesaid order and, therefore, complaint against the

applicant is also required to be quashed.

Initially the application was contested by the respondent No.2 by filing affidavit-in-reply. However, at the time of hearing Mr.Amin, learned advocate for the respondent No.2 pointed out that the dispute is settled between the parties.

It is required to be noted that by passing an order in Special Criminal Application No.341 of 2005 on 25-10-2005, learned Single Judge of this Court has already quashed the complaint in question being Crime Register No. I-346 of 2004. Since the entire complaint is quashed by this Court, no specific order is required to be passed quashing the complaint so far as present applicant is concerned. However, Mr.Anandjiwala submitted that since the applicant was not party to the earlier petition wherein the complaint is quashed, specific order may be passed quashing the complaint against the applicant.

As the dispute is settled between the complainant and the original accused, Mr.Amin, learned advocate for respondent No.2 submitted that now the complainant (respondent No.2) has no grievance against the present applicant and he has no objection if the F.I.R. is quashed against the applicant.

Ms.Manisha Shah, learned APP has submitted that the offence in question is a compoundable offence.

Considering the aforesaid aspect of the matter and considering the submission of Mr.Amin as well as decision of the learned Single Judge of

this Court rendered in Special Criminal Application No.341 of 2005, this application is allowed and complaint being Crime Register No.I-346/2004 is quashed and set aside so far as present applicant is concerned. Rule is made absolute accordingly.

(P.B.MAJMUDAR, J.)

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